

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed March 17, 2008. The Applicant traverses the rejections to claims 1-4 and 6-20. Claim 5 has been canceled. Claim 21 has been added. Reconsideration and allowance of the subject application and presently pending claims 1-4 and 6-21 is respectfully requested.

I. Response to Claim Rejections based on Anticipation

In the Office Action, claims 17 and 19-20 are preliminarily rejected under 35 USC§102(b) as being anticipated by U.S. Patent No. 5,992,288 to Barnes. For a proper rejection of a claim under 35 USC§102(b), the cited reference must disclose all elements/features/steps of the claim. See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co., 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

A. Claim 17

Claim 17 is presently written as:

A method of countering an airborne threat to an aircraft, comprising the steps of: determining threat information about said airborne threat; transmitting said threat information to a remote device; transmitting source information to said remote device; receiving instructions to deploy a countermeasure selected by said remote device, as a result of said steps of determining threat information, transmitting said threat information, and transmitting said source information, wherein said selected countermeasure is presently available; and deploying said selected countermeasure, wherein said threat information and said source information is collectively referred to as a track file.

HAYES SOLOWAY P.C.
3450 E. Sunrise Drive
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

The rejection of claim 17 under §102(b) as being anticipated by anticipated by Barnes is in error. Claim 17 requires, in part, "transmitting said threat information to a remote device." Barnes does not teach this feature of claim 17. In the Office Action, the Examiner suggests that this requirement of claim 17 is anticipated by Barnes in Col. 3, Lines 4-8; 38-41. However, the noted passages of Barnes fail to teach "transmitting said threat information to a remote device" as claim 17 requires. Specifically, the noted passages fail to disclose a "remote device" as required by claim 17.

Additionally, the Examiner notes that the "remote device" as claimed by the Applicant is anticipated by the TIC and in Col. 3, Lines 8-14 of Barnes. However, the noted passages fail to support the findings of the Examiner. The TIC or trial intercept calculation cannot be considered a teaching of a remote device because the TIC is a calculation process that is "performed." Support for this understanding can be found in the background, notably in Col. 1, Lines 20-21, and throughout the detailed description of Barnes. Likewise, Col. 3, Lines 8-14 fails to teach of a "remote device" as claimed by the Applicant. Further, the Examiner suggests that the step of, "deploying said selected countermeasure" is anticipated by Barnes as seen in Col. 5, Lines 23-30. Barnes does discuss pairing a weapon to a target, but fails to teach of any deployment of a countermeasure, thus again falling short of anticipating the requirements of claim 17. Therefore, because Barnes fails to teach all requirements of claim 17, it cannot be the basis of a rejection under §102(b) and the Examiner's rejection is in error. Accordingly, Applicant respectfully requests withdrawal of the rejection.

HAYES SOLOWAY P.C.
3450 E. Sunrise Drive
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

B. Claims 19-20

The Applicant respectfully submits that since claims 19-20 depend on independent claim 17, claims 19-20 contain all limitations of independent claim 17. Since independent claim 17 should be allowed, as argued above, pending dependent claims 19-20 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q. 2d 1596, 1608 (Fed. Cir. 1988).

In the Office Action, claim 1 is rejected under 35 USC§102(e) as being anticipated by U.S. Patent No. 6,980,152 to Steadman et al.

C. Claim 1

Claim 1 is presently written as:

A system for countering an airborne threat to an aircraft, comprising:
at least one aircraft having an airborne countermeasures system (ACS) capable of controlling deployment of countermeasures located on said aircraft; and
a central countermeasures management system (CCMS) capable of communicating with said ACS to control said ACS in deployment of said countermeasures located on said aircraft.

(Emphasis added).

The rejection of claim 1 under 35 USC§102(e) as being anticipated by Steadman is in error. Claim 1 requires, in part, “a central countermeasures management system (CCMS) capable of communicating with said ACS to control said ACS in deployment of said countermeasures located on said aircraft.” The Examiner, on page 5 of the Office Action, suggests that “a local countermeasure deployment device” is taught by references 142b and 150 of figure 1 of Steadman. However, this understanding is misguided because a local

HAYES SOLOWAY P.C.
3450 E. Sunrise Drive
TUCSON, AZ 85718
TEL: 520.882.7623
FAX: 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL: 603.668.1400
FAX: 603.668.8567

countermeasure deployment device is not equivalent to ‘a central countermeasures management system’ as claim 1 requires, and neither reference 142b nor reference 150 of Steadman can be interpreted as “a central countermeasures management system.” Reference 142b is merely a receiver that may receive a signal. See Col. 3, Lines 34-37. One having ordinary skill in the art would find that a receiver is neither equivalent nor anticipatory of “a central countermeasure deployment device” as claimed by the Applicant. Additionally, reference 150 is disclosed as a ground based countermeasure, but Steadman fails to provide any teachings that reference 150 is a “management system” as claim 1 requires, or is capable of any managing of countermeasures. The Applicant’s claims are sufficiently supported by the description of the invention and the figures provided such that one having ordinary skill in the art would understand that “a central countermeasures management system” includes substantially more than a receiver and a countermeasure, as suggested by the Examiner. Therefore, because Steadman fails to teach all requirements of claim 1, it cannot be the basis of a rejection under §102(e) and the Examiner’s rejection is in error. Accordingly, Applicant respectfully requests withdrawal of the rejection.

II. Response To Claim Rejections Based On Obviousness

In the Office Action, Claims 7 and 10-16 are rejected under 35 USC§103(a) as being unpatentable over Barnes in view of U.S. Patent No. 6,467,388 to Malakatas. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the

HAYES SOLOWAY P.C.
3450 E. Sunrise Drive
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

claim at issue. See, e.g., In re Dow Chemical, 5 U.S.P.Q. 2d 1529, 1531 (Fed. Cir. 1988), and In re Keller, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

A. Claim 7

Claim 7 is presently written as:

A method of countering an airborne threat to an aircraft, comprising the steps of:
receiving threat information about said airborne threat from a remote source;
receiving source information about said remote source;
determining a type of airborne threat from said received threat information and
said received source information;
selecting a countermeasure that is presently available by said remote source,
wherein said countermeasure is capable of deterring said airborne threat from
inflicting damage to said aircraft; and
instructing said remote source to deploy said selected countermeasure that is
presently available.

The rejection of claims 7 and 10-16 under 35 USC§103(a) as being unpatentable over Barnes in view of Malakatas is in error. Claim 7 requires, in part, “instructing said remote source to deploy said selected countermeasure that is presently available.” Barnes fails to teach this feature of claim 7. As previously recited with respect to the rejection of claim 17 under §102(b), Barnes does discuss pairing a weapon to a target, but fails to teach of any deployment of a countermeasure. Additionally, the Examiner has pointed to no passage of Barnes that teaches, “instructing said remote source to deploy” a countermeasure. Thus, Barnes falls short of teaching at least this noted feature of the subject application. Malakatas does not overcome the shortcomings of Barnes, nor has the Examiner suggested that it does. Therefore, because Barnes and Malakatas fail to render all requirements of claim 7 unpatentable, the Examiner’s rejection is in error. Accordingly, Applicant respectfully requests withdrawal of the rejection.

HAYES SOLOWAY P.C.
3450 E. Sunrise Drive
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

B. Claims 10-16

The Applicant respectfully submits that since claims 10-16 depend on independent claim 7, claims 10-16 contain all limitations of independent claim 7. Since independent claim 7 should be allowed, as argued above, pending dependent claims 10-16 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q. 2d 1596, 1608 (Fed. Cir. 1988).

Claims 1-6 are rejected under 35 USC§103(a) as being unpatentable over Malakatas in view of U.S. Publication No. 2003/0033059 to Ebert.

C. Claim 1

Claim 1 is presently written as:

A system for countering an airborne threat to an aircraft, comprising:
at least one aircraft having an airborne countermeasures system (ACS) capable of controlling deployment of countermeasures located on said aircraft; and
a central countermeasures management system (CCMS) capable of communicating with said ACS to control said ACS in deployment of said countermeasures located on said aircraft.

(Emphasis added).

The rejection of claim 1 under §103(a) as being unpatentable over Malakatas in view of Ebert is in error. Claim 1 requires, in part, "a central countermeasures management system (CCMS) capable of communicating with said ACS to control said ACS in deployment of said countermeasures located on said aircraft." Malakatas fails to teach this feature of claim 1. The passage of Malakatas that is cited by the Examiner, Col. 3, Lines 23-30 fails to provide any teachings of, "a central countermeasures management system," as claim 1 requires, or any

teachings at all of a system capable of managing countermeasures. As stated previously, one having ordinary skill in the art would understand that "a central countermeasures management system" includes substantially more than what the Examiner interprets in the Office Action. Furthermore, Applicant respectfully submits that Ebert fails to overcome the shortcomings of Malakatas, as the Examiner is silent on this. Therefore, for at least this reason, the rejection of claim 1 as unpatentable over Malakatas in view of Ebert is in error. Accordingly, Applicant respectfully requests withdrawal of the rejection.

B. Claims 2-5

Claims 2-5 are rejection under 35 USC§103(a) as being unpatentable over Malakatas in view of U.S. Publication No. 2003/0033059 to Ebert because of their dependencies on independent claim 1, as well as rejected under 35 USC§103(a) as being unpatentable over Steadman et al. in view of Barnes. Applicant respectfully submits that since claims 2-5 depend on independent claim 1, claims 2-5 contain all limitations of independent claim 1. Since independent claim 1 should be allowed, as argued above, pending dependent claims 2-5 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q. 2d 1596, 1608 (Fed. Cir. 1988). Additionally, the rejection of claims 2-5 under §103(a) as being unpatentable over Steadman, et al. in view of Barnes does not overcome the shortcomings of Malakatas in view of Ebert. Therefore, because claims 2-5 depend from an allowable claim, the rejection is in error. Accordingly, withdrawal of the rejection is respectfully requested.

HAYES SOLOWAY P.C.
3450 E. Sunrise Drive
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

III. Response to Claim Rejections Based on Enablement

In the Office Action, claim 5 has been preliminarily rejected under 35 U.S.C. § 112,

second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 has been canceled thereby remedying the Examiner's rejection under §112.

IV. Response to Objections Based on Claim Dependencies

The Applicant thanks the Examiner for determining that claims 8-9 and 18 are of allowable subject matter. As independent claims 1 and 17, from which claims 8-9 and 18 depend from respectively are now in condition for allowance, Applicant submits that claims 8-9 and 18 are also in condition for allowance, as they depend from an allowable claim.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and rejections have been traversed, rendered moot and/or accommodated, and that presently pending claims 1-4 and 6-21 are in condition for allowance. Favorable reconsideration and allowance of the present application and the presently pending claims are hereby courteously requested. If in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (603) 668-1400.

Respectfully submitted,



Todd A. Sullivan
Attorney for Applicant
Reg. No. 47,117

Customer No. 26,812

HAYES SOLOWAY P.C.
3450 E. Sunrise Drive
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being deposited with the United States Patent Office via the electronic filing procedure on June 9, 2008.

By: Karen Stueck

HAYES SOLOWAY P.C.
3450 E. Sunrise Drive
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567